

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

THE STATE OF TEXAS; TEXAS HEALTH  
AND HUMAN SERVICES COMMISSION,

Plaintiffs,

V.

CHIQUITA BROOKS-LASURE, in her  
official capacity as Administrator of the  
Centers for Medicare & Medicaid  
Services, *et al.*,

Defendants.

Case No. 6:21-cv-00191-JCB

## PLAINTIFFS' NOTICE REGARDING REQUEST FOR ORAL HEARING

Plaintiffs the State of Texas and Texas Health and Human Services Commission hereby notify the Court of their withdrawal of their request for an oral hearing on their pending Motion to Enforce the Preliminary Injunction. ECF 75 at 2, 29.

When Plaintiffs filed the motion on November 11, 2021, they requested an oral hearing because of the importance to Medicaid providers of obtaining CMS’s compliance with the preliminary injunction and because of the number of issues raised in the motion. The need for resolution of the issue that remains unresolved—whether CMS has the authority to regulate private agreements between healthcare providers—is even more urgent today. *See* ECF 84 at 1. As indicated in the letter from Texas Medicaid providers attached as Exhibit A, CMS’s failure to approve Texas’s state directed-payment programs is having a devastating impact on healthcare providers who, without Texas’s Medicaid supplemental payments, “cannot sustainably provide the care that [Texas’s] medically underserved communities currently receive.” Ex. A at 1. Moreover, Texas is now experiencing a surge in hospitalizations as a result of the spread of the Omicron

variant, which is further impacting these providers.<sup>1</sup> The lack of approved state directed-payment programs in combination with the recent COVID-19 surges has increased the risk of imminent provider closures. *See generally* Ex. B. (Grady Declaration).

In light of this urgency, Plaintiffs withdraw their request for an oral hearing so that there is no need for the Court to delay its decision on the pending motion in order to accommodate Plaintiffs' request. Plaintiffs, however, remain willing to participate in an oral hearing if the Court would find it helpful.

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<sup>1</sup> *See, e.g.*, Steven Dial, *Omicron variant surge to peak in late January in North Texas, UT Southwestern says*, FOX 4 (Jan. 3, 2022 8:33 PM), <https://www.fox4news.com/news/omicron-variant-surge-to-peak-in-mid-january-in-north-texas-ut-southwestern-says>; Karen Brooks Harper, *COVID-19 hospitalizations double in Texas as omicron strains staffing*, TEXAS TRIBUNE (Jan. 3, 2022), <https://www.texastribune.org/2022/01/03/texas-covid-19-omicron/>; Michelle Homer, *Texas Children's reports COVID cases more than double in one week with 12 babies in ICU*, KHOU (Jan. 4, 2022 4:45 AM), <https://www.khou.com/article/news/health/coronavirus/texas-childrens-covid-cases-double-babies-icu/285-8f06a236-cc0f-40a4-aaab-4bb5b535f6f9>; Megan Menchaca, *University of Texas reports record-high COVID-19 case count amid omicron surge*, AUSTIN AMERICAN-STATESMAN (Jan. 4, 2022 11:53 AM), <https://www.statesman.com/story/news/2022/01/04/university-texas-covid-19-dashboard-omicron-variant-symptoms-surge/9089366002/>.

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Respectfully submitted.

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#### **CERTIFICATE OF SERVICE**

I certify that on January 6, 2022, this brief was filed with the Court's CM/ECF system, which automatically serves a copy on all counsel of record.

/s/ Jeffrey M. White